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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,535	05/16/2006	Takashi Mori	Q94763	8478
65565 7590 11/27/2009 SUGHRUE-265550 2100 PENNSYLVANIA AVE. NW WASHINGTON, DC 20037-3213				
EXAMINER STULIL, VERA				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
11/27/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/579,535

Applicant(s)

MORI ET AL.

Examiner

VERA STULII

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The Examiner for this application has changed to Vera Stulii (AU 1794).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 8, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 is rendered indefinite for the recitation of the phrase "further allowing any one of the molded fish meat protein molded into a fibrous form by acid denaturation, the fish meat paste and the mixture thereof to have a buffer function for thereby adjusting a pH thereof to from 6.7 to 7.5". It is not clear what are the specific method steps and condition that allow for "any one of the molded fish meat protein molded into a fibrous form by acid denaturation, the fish meat paste and the mixture thereof to have a buffer function".

In response to Applicants' arguments regarding claim 8, it is noted that current amendment of the claim was not sufficient to overcome the rejection under 35 U.S.C. 112, second paragraph for the reason stated immediately above. Applicant amended the claim to clarify that various fish ingredients are allowed "to have a buffer function". However, it is not clear what are the specific method steps and condition that allow for "any one of the molded fish meat protein molded into a fibrous form by acid denaturation, the fish meat paste and the mixture thereof to have a buffer function".

The term "excellent" in claims 10 and 11 is a relative term which renders the claim indefinite. The term "excellent" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear what exactly "excellent" would mean in terms of form retention property.

In response to Applicants' arguments regarding the rejection of claim 10 under 35 U.S.C. 112, second paragraph, it is noted that Applicants refers to the flake generation ratio as a function of form retention property (page 6 of the Reply to the Non-Final Office action mailed 04/03/2009). Applicants' arguments are not found persuasive. It is not clear what is the criterion of determination of the degree of form retention property based on the flake generation ratio. It is not clear what is the standard for ascertaining the requisite degree, for example, what are the flake generation ratios corresponding to the low, poor, average, good or excellent form retention property.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishimura (US 4,584,204) in view of Okada (US 4,559,236) and Okada (US 4,880,654) for the reasons as stated in the Non-Final Office action mailed 04/03/2009.

In regard to the newly added recitation "whereby the dried fibrous fish meat-bound food can be rehydrated with hot water and consumed" in claims 6, 7 and 8, it is

noted that this recitation does not exclude consumption of the fish food in a dry state. The recited phrase is merely an intended use recitation. The recitation does not necessarily require rehydration with hot water, rather suggests that dry food product is capable of rehydrating with hot water. Further in this regard, it is noted that a dried food product, in general, could be rehydrated by addition of hot water to a dried product. The decision to consume a rehydrated dried product as opposed to the non-rehydrated dried product is a matter of personal choice of the consumer. It is not seen how the intended use of the dried product distinguishes over the prior art method.

Response to Arguments

Applicant's arguments filed 07/06/2009 have been fully considered but they are not persuasive.

On pages 8 and 9 of the Reply to the Non-Final Office action mailed 04/03/2009, Applicants' state that the combination of Nishimura, Okada '236 and Okada '654 does not teach or suggest that the dried fibrous fish meat-bound food can be rehydrated with hot water and consumed. In response to this argument it is noted that this recitation does not exclude consumption of the fish food in a dry state. The recited phrase is merely an intended use recitation. The recitation does not necessarily requires rehydration with hot water, rather suggests that dry food product is capable of rehydrating with hot water. Further in this regard, it is noted that a dried food product, in general, could be rehydrated by addition of hot water to a dried product. The decision to consume a rehydrated dried product as opposed to the non-rehydrated dried product is

a matter of personal choice of the consumer. It is not seen how the intended use of the dried product distinguishes over the prior art method.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **VERA STULII** whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner
Art Unit 1794

/Vera Stulii/
Examiner, Art Unit 1794